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Carol X Weakley 10/18/2006 02:46:18 PM From DB/Inbox: Carol X Weakley

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S E C R E T TEL AVIV 04106

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ACTION: ECON  
INFO: IPSC SCI IMO CONS RES POL DCM AMB AID ADM FCS  
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DISSEMINATION: ECON  
CHARGE: PROG

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S E C R E T SECTION 01 OF 02 TEL AVIV 004106

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E.O. 12958: DECL: 10/13/2016  
TAGS: [ECON](#) [ETRD](#) [PGOV](#) [KIPR](#) [IS](#)  
SUBJECT: UPDATE ON ISRAEL'S COPYRIGHT LEGISLATION

REF: A. TEL AVIV 03785

[1](#)B. TEL AVIV 03843

Classified By: Economic Counselor William Weinstein for reasons 1.4 (b)  
and (d)

[1](#)1. (S) Summary: Israel is moving forward with legislation to modernize and unify its existing copyright law. Three pieces of pending copyright legislation have a direct impact on U.S. industry. Working-level contacts at Ministry of Justice (MoJ), who drafted the legislation, display varying degrees of flexibility in responding to U.S. industry concerns. While these concerns tend to focus on the specific provisions of the legislation (as applicable to a given industry), all of Posts' contacts oppose the legislation's decriminalization of end-user piracy and its lack of protection for digital media. Per Washington's request EconCouns has requested that the Ministry of Industry, Trade, and Labor (MOITAL) engage with the MoJ to review the draft legislation and begin immediate consultations with the USG. End Summary.

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Status of Legislation  
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[1](#)2. (C) Currently, three different pieces of legislation related to copyrights -- in various stages of completion -- are being circulated. The 2005 Copyright Bill passed a first reading in the Knesset on July 20, 2005 and is being considered by the Knesset Economic Committee. The 2006 Copyright Tribunal Bill was published on July 10, 2006 and has also passed a first reading and been forwarded to the Knesset Economic Committee. These two bills will likely be considered together by the Committee. The Ministry of Justice is the originator and sponsor of the 2005 Copyright Bill and the 2006 Copyright Tribunal Bill. U.S. industry has

voiced serious concerns over key provisions of these two draft pieces of legislation. A private bill submitted by members of the Meretz party on July 17, 2006 -- aimed at preventing digital piracy -- has not been voted on by the Knesset.

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Ministry of Justice  
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13. (S) As the drafter of the Copyright Bill and the Copyright Tribunal Bill, the MoJ has championed the legislation. With the resignation of Minister of Justice Haim Ramon, pending an investigation into allegations of sexual harassment, Meir Sheerit assumed the position of acting Minister of Justice in August 2006. In a September 19 meeting with the Ambassador, Sheerit promised to look into the pending copyright legislation (reftel a). In a follow-up-letter and phone call to the Ambassador, Sheerit said that the copyright legislation had already "passed." (Comment: Technically Sheerit is correct. The legislation "passed" the ministerial committee and was forwarded to the Knesset as a government bill. However, the legislation is far from becoming law. It appears as if Sheerit's staff is telling him that the legislation is being handled by the Knesset Economic Committee and is out of their hands. However, past experience with pharmaceutical IPR legislation championed by the MOITAL indicates that the drafting Ministry has considerable influence over the Knesset's consideration of the legislation, especially draft legislation as long and technical as the Copyright Bill. End comment). Copyright legislation at the MoJ is the responsibility of Advocate Tamir Afori, who has been working on the draft legislation since joining the MoJ six years ago.

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Industry Concerns  
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14. (S) The software, music, and movie industries agree that while the Copyright Bill is an improvement on existing law -- a mix of British era legislation -- it fundamentally fails to implement the necessary safeguards for intellectual property in a digital world. Another concern shared by the majority of the copyright industries is the failure of the legislation to designate end-user piracy as a criminal offense. During the period of the 2006 Special 301 review, Econoff highlighted these concerns to Afori at MoJ. His response was explosive and unexpected -- he railed against U.S. industry wanting to "make everything a crime" and questioned the logic in designating it as such, given that Israel has no intention of prosecuting end-users who commit just a single act of piracy. Afori commented that he was tired of the U.S. "hinting" at the problem and proposed that the U.S. either quote the relevant law requiring that end-user piracy be declared a criminal offense, or drop the matter.

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Software Industry  
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15. (S) Microsoft Israel has been the most successful of the interested parties in lobbying for changes in the Copyright Bill. Government Affairs Manager for Microsoft Israel, Shai-lee Spigelman, told EconCouns on July 13 that Microsoft has formed a coalition of foreign and Israeli software development companies to push for changes in the bill. Microsoft's key concerns center around the provisions for creating back-up copies and the unlimited exemptions granted to public libraries. Anti-piracy manager at Microsoft Israel, Gil May-Tal, told Econoff that he has also pushed the MoJ to define end-user piracy as a crime, but found MoJ's Afori entrenched in opposition to such a change. While Microsoft wants to see end-user piracy defined as a crime in the legislation, May-Tal deemed it not worth pushing, and thereby risking the positive relationship that Microsoft has built with the Afori. May-Tal said Afori is inclined to consider changes to the back-up copy and library usage

clauses as recommended by Microsoft. Microsoft execs report that the drafting of the legislation was influenced by proponents of the EU's open source movement.

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Movie Industry  
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¶6. (C) ALIS, the Motion Picture Association of Israel, has thus far not commented on the draft copyright legislation. However, the Cinema Industry Association in Israel wrote to the Ambassador on September 11 to urge USG support for a draft proposal submitted by the Meretz Party. The legislation is aimed at combating digital and on-line piracy. Among the key provisions of this bill are: prohibiting the posting of creations on digital networks without the permission of the creator, prohibiting the listening to or viewing of pirated copies of creations, and imposing varying degrees of responsibility on Internet service providers for the content its users are able to access.

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Recording Industry  
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¶7. (S) Some of the most damaging clauses of the Copyright Bill affect the recording industry. Itshak Sheffer, Managing Director of the International Federation of Phonographic Industry (IFPI) Israel, told EconOff that he suspects the MoJ might be pursuing a discriminatory policy towards the recording industry in part because IFPI has been successful in winning several court cases against the MoJ. One of the industry's main concerns is that the Copyright Bill could deny foreign sound recordings remuneration for public broadcast and performance. The recording industry also expressed concern over the Copyright Tribunal Act -- legislation which will unify the collection of royalties under one umbrella organization.

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Next Steps  
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¶8. (S) Director of the International Trade Administration at MOITAL Boaz Hirsch promised EconCouns on October 5 that he will schedule a meeting including the Director General of the MoJ and Emboffs to discuss U.S. concerns about the copyright legislation immediately after the Succot holidays. Post continues to emphasize with the MOITAL that this legislation will impact US-Israel trade, and that discussions should not be confined to MoJ legal staff. The Knesset Economic Committee is currently led by a Likud MK, and Likud chairman Bibi Netanyahu has promised to look into the legislation (reftel b). While Post believes that inclusion of the MOITAL will broaden discussion of the impact of the legislation on U.S. industry, concurrent technical consultations between U.S. legal experts and the MoJ's IPR legal team are essential to full USG understanding of the legislation. Local analysts predict that the committee will hold hearings and consider the legislation section-by-section before recommending any amendments. During this time the MoJ, if it chooses, will also be able to recommend changes to the committee.

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